

**A RESOLUTION  
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THREE (3) INTERGOVERNMENTAL AGREEMENTS WITH FULTON COUNTY, GEORGIA, TO PROVIDE FOR FORMAL SERVICE AGREEMENTS FOR WHOLESALE WASTEWATER SERVICES PROVIDED BY THE CITY OF ATLANTA AND BY FULTON COUNTY, ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") owns and operates the R. M. Clayton and Utoy Creek Water Reclamation Centers ("WRC"); and

**WHEREAS**, Fulton County ("Fulton") owns and operates the Camp Creek Water Reclamation Facility ("WRF"); and

**WHEREAS**, the City and Fulton have provided wholesale wastewater services to each other for decades without a formal service agreement for capital costs associated with the WRCs and WRF; and

**WHEREAS**, the City and Fulton have negotiated and finalized appropriate Intergovernmental Agreements ("IGAs") to establish terms, conditions and provisions for recovering past, current and future capital and operational costs.

**WHEREAS**, upon execution of the IGAs, Fulton will make a net payment to the City of Twenty Six Million Seven Hundred Seventy Two Thousand Four Hundred Thirty Two Dollars and No Cents (\$26,772,432.00) for wastewater services provided by the City to Fulton; and

**WHEREAS**, the Commissioner of the Department of Watershed Management desires the execution of the three IGAs establishing formal agreements with Fulton for wholesale wastewater services.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the Mayor is authorized to enter into three (3) Intergovernmental Agreements ("IGAs") with Fulton County to establish formal agreements for wholesale wastewater services.

**BE IT FURTHER RESOLVED**, that the City Attorney is directed to prepare and finalize the IGAs for execution by the Mayor, in substantial compliance with the terms set forth in the IGAs attached as Exhibit "A."

**BE IT FINALLY RESOLVED**, that the three IGAs will not become binding upon the City and the City will incur no obligation nor liability under them until each has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to Fulton County.

**CITY OF ATLANTA and FULTON COUNTY**  
**WASTEWATER SERVICES AGREEMENT**  
**FOR R.M. CLAYTON WATER RECLAMATION CENTER**

THIS WASTEWATER SERVICES AGREEMENT (this "Agreement"), entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia, hereinafter referred to as "Atlanta," and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "Fulton."

**W I T N E S S E T H:**

**WHEREAS**, each of the parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of sewerage in its respective jurisdiction to serve its citizens; and

**WHEREAS**, Atlanta owns and operates the R.M. Clayton Water Reclamation Center, hereinafter referred to as "R.M. Clayton"; and

**WHEREAS**, Atlanta is in the process of constructing the Nancy Creek Conveyance and Lift Station capital project (scheduled to be completed in January 2006), hereinafter referred to as the "Nancy Creek Project" or "Current Project", to expand collection system capacity within the R.M. Clayton service area; and

**WHEREAS**, Atlanta has completed projects at R. M. Clayton that increased its capacity to 103 mgd and for the reduction of phosphorus, hereinafter referred to as "Past Project", and

**WHEREAS**, the Georgia Department of Natural Resources, Environmental Protection Division, has mandated that watershed assessment and planning be conducted to support environmental regulatory action on wastewater discharges; and

**WHEREAS**, both parties agree that it is in their mutual interests to work cooperatively on wastewater management and watershed management in the R.M. Clayton service area and

agree that the environmental management of the common watershed can be enhanced through regional cooperation; and

**WHEREAS**, the terms of this Agreement are intended to address the long term needs related to wastewater management; and

**WHEREAS**, the parties wish to set terms and conditions and provide procedures for the current and future use of R.M. Clayton and future capital improvements to the Sewerage System, and to agree upon methods of determining and sharing current and future costs of capital improvements, and expenses for operation and maintenance.

**NOW, THEREFORE**, in consideration of the mutual rights and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

In the construction of this Agreement, the following terms shall have the associated meanings and shall be construed as required by the following provisions, unless inconsistent with the manifest intent of the text:

1.1 **APPLICABLE INTEREST RATE**. The interest rate per annum, currently known as the "Discount Rate", set by the Federal Reserve Board representing the interest rate at which depository institutions borrow money from the Federal Reserve Bank of New York.

1.2 **BUSINESS DAY**. Each day excluding each Saturday, Sunday and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.

1.3 **CAPITAL IMPROVEMENTS**. Those additions, replacements or improvements to the Sewerage System, which, under generally accepted accounting principles or practices, are considered capital in nature, and which are made for the purpose of improving the Sewerage System or expanding the capacity of the Sewerage System.

1.4 COLLECTION SYSTEM. A component of the Sewerage System consisting of the sewer lines, storage, pump stations, and force mains which transport flows to a treatment facility or its influent pumping station.

1.5 DATE OF EXECUTION. The date on which the last party to this Agreement executes this Agreement.

1.6 DESIGN CAPACITY. Flow capacity in million gallons per day ("mgd") of a particular water pollution control or reclamation facility as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, which must be certified by an engineer licensed to practice in the State of Georgia, expressed as average daily flow, maximum month [average daily] flow, and peak wet weather flow; provided, however, as to any facility for which a permit from a regulatory body as to its maximum flow capacity is required, the "Design Capacity" of such facility shall not exceed such maximum permitted flow capacity.

1.7 COMMISSIONER OF ATLANTA WATERSHED MANAGEMENT. The Commissioner of the Department of Watershed Management of Atlanta, or whoever shall in the future perform those functions relative to this Agreement.

1.8 DIRECTOR OF PUBLIC WORKS. The Director of Public Works of Fulton, or whoever shall in the future perform those functions relative to this Agreement.

1.9 ESCROW AGENT. Shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent.

1.10 GOVERNING AUTHORITY. As applicable, the Mayor and City Council of the City of Atlanta, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.

1.11 NPDES PERMIT. National Pollution Discharge Elimination System Permit.

1.12 PROJECT. Any project consisting of capital improvements to the Sewerage System undertaken pursuant to this Agreement.

1.13 PROJECT COSTS. Any and all costs and expenses of a Project, including, without limitation, the costs of planning, design, engineering, architectural, and construction of the Project, the costs of plans and specifications, the costs necessary or incident to determining the feasibility or practicality of the Project, the costs of acquiring or condemning all lands, properties, rights, and easements acquired for the Project, the costs of all buildings, machinery and equipment included in the Project, the costs of insurance, financing charges and interest as applicable, the costs of compliance with environmental regulations and environmental protection, the costs of re-rating any facility, the costs of project construction management and construction engineering, administrative costs, legal fees and expenses, and such other costs as may be necessary or incident to the construction and equipping of the Project, and the placing of the Project in operation; provided, however, "Project Costs" shall not include any operating cost (as accepted by industry standard), any repair or routine maintenance cost, or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of the Constructing Party or such party's agent.

1.14 RATES. Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Atlanta. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale, inclusive of a capital component and operation and maintenance component based on no contribution to the Sewerage System ["Capital/O&M"]; and (3) wholesale, without a capital component and inclusive of operation and maintenance component based on a capital contribution to the Sewerage System ["O&M"]. Whenever Atlanta deems it necessary to revise its rates, Atlanta shall notify Fulton in writing not less than sixty (60) days prior to submittal of such revised rates to its Governing Authority for approval. Upon approval of such rates, Atlanta shall notify Fulton in writing by the first to occur: (a) thirty (30) days after

such approval by the respective Governing Authority or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Atlanta's sole authority to revise its rates. All documentation used in the cost of service studies shall be available to Fulton within ten (10) Business Days of written request thereof. Both parties shall use Fulton's current wholesale rates, until such time as Atlanta performs updated cost of service studies for wholesale rates, to be completed within a 12-month period following execution of this Agreement. The methodology for the cost of service study to set wholesale rates shall be as described in **Exhibit A** attached hereto. The results of the updated cost of service study shall be retroactively applied to this Agreement, with a maximum allowable increase of 50%. [Note: Current Fulton Wastewater rates are: (retail) \$4.99 per 1,000 gallons; (capital/O&M) \$3.50 per 1,000 gallons; (O&M) \$1.44 per 1,000 gallons].

1.15 RESERVED CAPACITY. The quantity of flow expressed as million gallons per day or thousand gallons per day purchased and allocated for use by Fulton of a particular water pollution control or reclamation facility or Project operated by Atlanta as determined by a percentage of total permitted capacity of R.M. Clayton or Project.

1.16 REQUIRED FINANCIAL CONTRIBUTION. The dollar amount payable by Fulton to Atlanta with respect to each Project undertaken pursuant to this Agreement equal to (a) the sum of the Total Project Cost for the Project minus the total amount of all state and federal funds or other funds not derived from operations or pursuant to Article 1.14 received or to be received for such Project (b) multiplied by Fulton's Required Financial Contribution Percent.

1.17 REQUIRED FINANCIAL CONTRIBUTION PERCENT. The applicable percent specified in Article 2.1 or in an amendment to this Agreement for the applicable Project, or if no percent is so specified for any future capital improvement to an existing facility for which a Reserved Capacity is specified in this Agreement, the Required Financial Contribution Percent shall be the ratio of the Reserved Capacity to the Design Capacity of such facility.

1.18 SEWERAGE SYSTEM or SEWER SYSTEM. The physical system of sewers, pumping stations, force mains, storage and treatment facilities by which Atlanta and Fulton collect, convey, treat and discharge wastewater within the R.M. Clayton service area. For purposes of this Agreement, the R.M. Clayton service area is shown in **Exhibit B** attached hereto.

1.19 TOTAL PROJECT COST. The aggregate dollar amount of all Project Costs of a Project undertaken pursuant to this Agreement.

## ARTICLE 2

### CURRENT AND PAST CAPITAL IMPROVEMENTS OF ATLANTA

2.1 FULTON'S REQUIRED FINANCIAL CONTRIBUTION PERCENT FOR THE (CURRENT) NANCY CREEK PROJECT. The parties agree that Fulton's Required Financial Contribution Percent for (a) the Nancy Creek Project scheduled for completion in January, 2006 is 12.3065%, as per the negotiated calculations in **Exhibit C**.

The Nancy Creek Project includes the design and construction of a 16-foot diameter tunnel; however, Fulton's Financial Contribution Percent is based on the estimated cost of an 8-foot diameter tunnel. Fulton's Financial Contribution Percent is determined by the ratio of (a) the estimated cost of the portion of an 8-foot diameter tunnel that provides the reserved carrying capacity allocated to Fulton minus the estimated cost of in-line storage capacity to (b) the total estimated cost of an 8-foot diameter tunnel, as shown in **Exhibit C**.

2.2 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR THE (CURRENT) NANCY CREEK PROJECT. The parties agree that Fulton's Required Financial Contribution for the Nancy Creek Project is equal to (a) the sum of the estimated cost of an 8-foot diameter tunnel minus a prorated share of the total of all state and federal funds received or to be received for the respective Project (b) multiplied by the respective Required Financial Contribution Percent set forth in Article 2.1.

The parties agree that the estimated Total Project Cost for the 8-foot diameter tunnel is \$143,396,599 and that Fulton's Required Financial Contribution for the Nancy Creek Project as of the date of execution of this Agreement is \$17,647,103 (see **Exhibit C**). Fulton shall make a single lump sum payment to Atlanta in the amount of \$17,647,103 representing its Required Financial Contribution for Atlanta's Nancy Creek Project within 90 days of the execution of this Agreement.

2.3 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR ATLANTA'S PAST CAPITAL IMPROVEMENTS. The parties agree that Fulton's Required Financial Contribution Percent for Atlanta's Past Capital Improvements to the R. M. Clayton WRC is as shown in **Exhibit D**. Atlanta acknowledges that Fulton as of the date of this Agreement has previously paid and Atlanta has received the sum of \$22,960,579 as Fulton's partial payment of its total obligation. Fulton shall make a single lump sum payment to Atlanta in the amount of \$19,194,236, representing the remaining portion of its required financial contribution for Atlanta's past capital improvements, within 90 days of execution of this Agreement, as shown in **Exhibit D**.

2.4 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR ATLANTA'S PAST OPERATION AND MAINTENANCE EXPENSES. The parties agree that Fulton's Required Financial Contribution for Atlanta's past operation and maintenance expenses at R.M. Clayton is \$0.00.

### ARTICLE 3

#### FUTURE CAPITAL IMPROVEMENTS OF ATLANTA

3.1 DETERMINATION TO MAKE FUTURE CAPITAL IMPROVEMENTS. Atlanta may make necessary Capital Improvements to the Sewerage System from time to time, subject to approval by appropriate state or federal regulatory agencies, if excessive water loads or flows are impairing the efficient operation of the Sewerage System, if additional capacity is required, if such improvements are necessary to comply with the regulations or requirements of agencies of



the State of Georgia, and/or agencies of the federal government, or if improved processes are available and the additions of said processes are necessary or desirable to provide operations which are more efficient and economical. Fulton agrees that the determination to make capital improvements for any one or more of the reasons aforementioned shall be made by Atlanta. For the purpose of long-range planning, the parties, acting by and through the Atlanta Commissioner of Watershed Management and the Fulton Director of Public Works, shall meet at least annually or more frequently as deemed necessary to determine whether additional capacity to serve both jurisdictions will be required, necessary, or desirable, for any facility which is part of the Sewerage System. The parties agree that any such meeting will be held within thirty (30) days of a written request thereof from either party.

3.2 NOTICE AND METHOD OF PAYMENT. Upon the determination that Capital Improvements to the Sewerage System are necessary, desirable or appropriate pursuant to Article 3.1, Atlanta shall provide written notice to Fulton of such determination, which notice also shall include Atlanta's current estimate of the Total Project Cost of the Project and its calculation of the Required Financial Contribution from Fulton for such Project. Fulton shall respond in writing acknowledging such notice within 30 days after the date such notice is received. Also, within at least 90 days prior to scheduled award of any Project contract, Fulton shall deposit its Required Financial Contribution in lump sum with a third party Escrow Agent which shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent. The escrow deposit agreement shall provide (a) that the funds in escrow will be invested as directed in writing by Fulton, (b) that all investment earnings shall be paid to or at the direction of Fulton, (c) that the Escrow Agent shall disburse the escrowed funds monthly upon receipt of a written requisition from Atlanta certifying as to the Project Costs incurred on the applicable Project for which Fulton's applicable Required Financial Contribution has not then been paid (and which will not be paid with state or federal funds) and

certifying as to the dollar amount of Fulton's Required Financial Contribution with respect to such requisition, (d) that upon any change orders or other changes in the estimated Total Project Cost of the applicable Project, Atlanta shall give written notice of the same to Fulton and the Escrow Agent, and Fulton's Required Financial Contribution with respect to any such change of the estimated Total Project Cost shall be reflected in escrow with the Escrow Agent pursuant to the escrow deposit agreement within ninety (90) days of receipt of notice of such change, and (e) that Atlanta shall give written notice to Fulton and the Escrow Agent of completion of the applicable Project, and upon receipt of such completion notice the Escrow Agent shall return to Fulton any un-disbursed money and investment earnings held in escrow with respect to the completed Project.. During the course of the Project's construction and upon completion of the Project, adjustments to the estimated Total Project Cost shall be made in accordance with Articles 4.2 and 4.3.

#### **ARTICLE 4**

##### **PAYMENTS AND OWNERSHIP**

4.1 **FAILURE TO RESPOND.** In the event Fulton fails to respond in writing and/or fails to deposit the required funds with the Escrow Agent in accordance with Article 3 of this Agreement, such failure shall be deemed a material breach of this Agreement and all remedies set forth in this Agreement, including the provisions of Article 4.3 (interest), shall be available to Atlanta.

4.2 **ADJUSTMENT OF PAYMENTS.** Atlanta and Fulton agree that the calculation of the Total Project Cost for future Capital Improvements and Fulton's Required Financial Contribution with respect thereto are estimates, and that circumstances may arise that cause a change to such estimates. In such event, Atlanta shall notify Fulton in writing of the change of the estimated Total Project Cost amount and the change of its Required Financial Contribution as a result, and Fulton shall pay its Required Financial Contribution with respect to any such increase of the estimated Total Project Cost within sixty (60) days of receipt of notice of such

change by lump sum to the Escrow Agent. After (a) Atlanta initiates any capital improvement pursuant to this Agreement and has certified that construction of the Project has been completed in accordance with approved plans and specifications, (b) final payment of all federal or state grant money due Atlanta, if any, (c) final payment to the construction contractor(s) and resolution of any appropriate construction claims (excluding claims stemming from a negligent or intentional act or omission of Atlanta), and (d) Atlanta has determined the final Total Project Cost of the Project, then the mathematical adjustment of the total Required Financial Contribution payable by Fulton shall be made. Any payment required from either party as a result of such adjustment of the total Required Financial Contribution shall be made by such party within 60 days of receipt of notice of the final Total Project Cost and shall be made in accordance with Article 3.2.

4.3 FAILURE TO PAY WHEN DUE. In the event of any failure to pay when due any amount due under this Agreement, interest shall automatically accrue on such delinquent amount in accordance with Article 8.2 from the date such payment is due until full payment of such delinquent amount and accrued interest thereon is made.

4.4 OWNERSHIP OF SEWERAGE SYSTEM. Fulton agrees that the payment of its Required Financial Contribution for any current or future Project undertaken pursuant to this Agreement and payment of the rates assessed for its flow through R.M. Clayton and Nancy Creek Project constitute consideration paid for Fulton's contractual right to use R.M. Clayton and Nancy Creek Project in the amount of its Reserved Capacity therein, and does not constitute consideration paid for any ownership right, ownership interest, indicia of ownership or other property right in R.M. Clayton and Nancy Creek Project. Fulton's use of R.M. Clayton and Nancy Creek Project in the amount of its Reserved Capacity specified herein shall not constitute any transfer of any ownership rights, ownership interests or other property rights in R.M. Clayton and Nancy Creek Project.

## **ARTICLE 5**

### **USE OF FACILITIES**

#### **5.1 FULTON'S RIGHT TO USE OF R.M. CLAYTON AND NANCY CREEK PROJECT.**

5.1.1 **PAST CAPITAL IMPROVEMENTS.** Subject to Article 2.3 and 2.4 of this Agreement and payment of the amounts shown in **Exhibit D**, Fulton's Reserved Capacity in the existing R.M. Clayton is:

	Design Capacity (MGD)	Fulton's Reserved Capacity Percent	Fulton's Reserved Capacity (MGD)
Average Daily Flow	103	6.8%	7.0
Maximum Month Daily Flow	122	6.8%	8.3
Peak Wet Weather Flow	240	6.8%	16.3

5.1.2 **CURRENT CAPITAL IMPROVEMENTS.** Fulton's payment of its Required Financial Contribution as shown in **Exhibits C and D** for the total cost of the Nancy Creek Project undertaken pursuant to Articles 2.1 and 2.2 hereof, and Fulton's timely payment of applicable treatment rates (currently \$1.44 per 1,000 gallons) for its use of R.M. Clayton pursuant to this Agreement will entitle Fulton to discharge in the future no more than the following respective Reserved Capacity of flow to the Nancy Creek Project:

	Design Capacity (MGD)	Fulton's Reserved Capacity Percent	Fulton's Reserved Capacity (MGD)
Peak Wet Weather Flow	100	16.3%	16.3

5.1.3 **RE-RATING OF RESERVED CAPACITY.** The percentage of reserved capacity allocated to Fulton for the R.M. Clayton and Nancy Creek Project may not be increased or decreased except by amendment of this Agreement. Notwithstanding the provisions of Article 5.1.2, in the event that reserved capacity of the R.M. Clayton and Nancy Creek Project is re-rated through orders, permits or other federal or state regulatory requirements, Fulton's percentage of reserved capacity will remain unchanged, but the actual

reserve capacity will be increased or decreased proportionally. An amendment to this Agreement shall be implemented to reflect such re-rating.

5.2. DETERMINATION AND PAYMENT OF APPLICABLE RATES. Fulton agrees to pay for its flow usage at an established rate (currently \$1.44 per 1,000 gallons) that reflects the cost of service being provided as established and revised from time to time in accordance with Article 1.14. Said rate for flows exceeding the Reserved Capacity, for future flows only, shall be at the wholesale rate (currently \$3.50 per 1,000 gallons) inclusive of a capital component (based on no previous capital contribution to the Sewerage System; O&M/capital). Payments shall be due within thirty days of receipt of such billing.

Atlanta will charge and Fulton will pay for wastewater services at Atlanta's established rates that are in effect on the effective date of this Agreement ("Initial Rate"). The Initial Rate will be in effect until a new rate has been established based on an agreed upon utility industry standard cost of service methodology that Atlanta will follow in determining wholesale rates ("New Rate"). If Atlanta completes its cost of service study and gains approval by its Governing Authority within the initial 12-month period following execution of this Agreement ("Initial 12-Month Period"), then the New Rate will be applied retroactively beginning with the effective date of this Agreement. If Atlanta does not complete its cost of service study and gain approval by its Governing Authority within the Initial 12-Month Period, the Initial Rate will continue to be in effect during the Initial 12-Month Period and the opportunity for retroactive rate adjustment will be forfeited. Any New Rate that is applied retroactively during the Initial 12-Month Period shall not be greater than 150% of the Initial Rate. However, nothing herein is intended to be construed as affecting Atlanta's sole authority to revise its rates.

5.3 DETERMINATION OF FLOWS. The basis for billing shall be metered flow volumes wherever possible. Meters shall be calibrated no less often than quarterly, and appropriate calibration records shall be retained for not less than three years. Fulton shall have the opportunity to observe the calibration process, test the calibration equipment and review the

calibration records of Atlanta upon written request. Any meter tested and found to be accurate within ten percent shall be considered accurate for billing purposes. Where metering stations are not feasible or a dispute arises with respect to the accuracy or appropriateness of metering results, Atlanta's Commissioner of Watershed Management and Fulton's Director of Public Works shall mutually agree on an appropriate resolution.

5.4 PROVISION OF DATA. Both parties agree to provide flow data, or, if flow is not metered, water consumption within the service area and population data to the other as may be reasonably requested in writing by the other party within ten (10) business days following receipt of each such request.

5.5 CHANGES IN CAPACITY. Fulton may request additional Reserved Capacity in R.M. Clayton or Nancy Creek Project. Any increase of Reserved Capacity shall require the adjustment of the Required Financial Contribution Percent for the Total Project Cost of any future capital improvements to such facility. The percentage of Reserved Capacity and the corresponding Required Financial Contribution Percent may not, however, be increased or decreased except by formal written amendment of this Agreement.

5.6 FUTURE EXCESS FLOW. When the average daily flow received from Fulton to R.M. Clayton or the Nancy Creek Project based on a 60-day reporting period reaches 90% of the Reserved Capacity for such facility, Fulton must prepare and submit to Atlanta a written plan which demonstrates how future flows will be maintained within the Reserved Capacity. Should Fulton's flow received at R.M. Clayton or the Nancy Creek Project exceed its then-current Reserved Capacity, Fulton shall immediately take appropriate measures to reduce its flow to within its Reserved Capacity. Continued discharge in excess of the Reserved Capacity, without prior written approval by Atlanta, calculated as a daily average over 60 days time, will be considered a material breach of this Agreement, for which Atlanta is entitled to one or more of the following remedies, none of which shall be an exclusive remedy: (a) immediate payment of the applicable rate set forth in Article 5.2 with respect to the Reserved Capacity flow and the

flow in excess of the Reserved Capacity plus a surcharge rate equal to 25% of the then current rate applicable to the excess flow, (b) payment (or reimbursement) of any and all damages claimed by third parties directly related to such excess flow, (c) immediate payment (or reimbursement) of any and all civil penalties and fines imposed by regulatory agencies or courts of law directly attributed to such excess flow, (d) interest on any aforesaid amount not paid when due pursuant hereto at the Applicable Interest Rate calculated in accordance with Article 8.2, and (e) any and all other remedies available at law or in equity. Any amount payable pursuant to this Article 5.6 shall be paid by Fulton within fifteen (15) days following written demand thereof. The obligation to pay the applicable rate plus surcharge shall arise in the event that Fulton's flows to R.M. Clayton or the Nancy Creek Project exceed those set forth in Article 5.1.1 or 5.1.2.

## **ARTICLE 6**

### **COLLECTION SYSTEM.**

6.1 **FULTON'S RIGHTS.** Fulton shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fulton.

6.2 **ATLANTA'S RIGHTS.** Atlanta shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Atlanta.

6.3 **CHARGES FOR CONNECTIONS.** Fulton shall have the right to determine and impose charges for connections permitted or made to the Collection System within its sewer service boundaries. This right shall include the right to contract with other sewer service provider(s) for the use of the Sewerage System within its sewer service boundaries, provided that Fulton shall not permit by contract the discharge of flow which will result in Fulton exceeding its maximum Reserved Capacity flow to R.M. Clayton or the Nancy Creek Project as set forth in Article 5 hereof.

6.4 OPERATION AND MAINTENANCE. Fulton and Atlanta shall be responsible for operations and maintenance of the Collection Systems located within their respective sewer service boundaries.

## **ARTICLE 7**

### **SEWER USE ORDINANCES AND INDUSTRIAL PRETREATMENT PROGRAMS**

7.1 RESPONSIBILITIES. Each party will be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within its jurisdictional limits.

7.2 REVISIONS. Fulton will amend and/or revise its sewer use ordinance and industrial pretreatment program to comply with all state and federal requirements and will accept and implement reasonable changes to such ordinance and program requested in writing by Atlanta with respect to control of discharges which ultimately will be treated at R.M. Clayton. When required for compliance with Atlanta's NPDES permit, Fulton will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Atlanta.

7.3 ENFORCEMENT AND PERMITTING. Fulton agrees to diligently enforce its sewer use ordinance and industrial pretreatment program for users of its portion of the Sewerage System. Fulton will issue permits to all industrial dischargers within its jurisdictional limits as required by the ordinance and pretreatment program and will monitor compliance with the permits. A written report of non-compliant discharges within Fulton's jurisdiction tributary to R.M. Clayton will be provided by Fulton if any such non-compliance occurs.

7.4 FAILURE TO ENFORCE. In the event Fulton fails to take reasonable pretreatment enforcement action on a timely basis, Atlanta may take whatever action by law it is authorized to take.

7.5 OTHER JURISDICTIONS. Before an industrial user located outside the jurisdictional boundaries of Fulton discharges wastewater through the Fulton sewer system into the Atlanta sewer system for treatment at R.M. Clayton, Fulton will enter into an agreement with



the jurisdiction in which such industrial user is located. The terms of such agreement shall be substantially equivalent to the applicable terms of this Agreement, and such agreement must be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

7.6 ANNUAL REPORTS. Fulton will submit a written annual report to Atlanta on the compliance status of each significant industrial user and any enforcement response taken or anticipated. Each such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

7.7 EMERGENCY ACTION. Atlanta, acting as an agent of Fulton, may take emergency action to stop or prevent any discharge into its Sewerage System for treatment at R.M. Clayton that is generated in, or transported through Fulton, when in the reasonable opinion of Atlanta such damage presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, or contamination to Atlanta's Sewerage System. Atlanta agrees to provide such notice as is practicable to the sewer user and Fulton of its intent to take emergency action prior to taking action; provided, however, it is understood and agreed the opportunity to respond to such action or anticipated action may be limited to a hearing after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

## **ARTICLE 8**

### **PROVISIONS OF GENERAL APPLICATION.**

8.1 RIGHT TO SEEK SPECIFIC PERFORMANCE. The parties agree that the costs and damages resulting from a breach of the contractual rights to use the Sewerage System facilities up to the specified amounts granted by this Agreement may not be susceptible of monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy and the provisions of Article 8.9

have been complied with, either party shall be entitled to specific performance or any other equitable remedies provided by law.

8.2 RATE OF INTEREST. Whenever this Agreement provides for the accrual and payment of interest on sums to be paid by one party to the other, such interest shall be calculated at the Applicable Interest Rate or Rates as defined in Article 1.1 in effect during the period for which interest is due. Interest shall be calculated at the Applicable Interest Rate based upon the total number of calendar days during which the applicable amounts remain unpaid, including the original due date of the delinquent payment and excluding the day on which the amount (including accrued interest) is paid in full.

8.3 OPERATIONS REVIEW. Both parties agree that, upon receipt by one party of a written request from the other party for an operations review, an operations review to determine the status of the operation, maintenance and personnel needs of any component of the Sewerage System, as well as the efficiency, management, reliability and operational cost-effectiveness of any component of the Sewerage System, shall be completed and a written report of such review and the resulting recommendations shall be delivered to the requesting party within ninety (90) days following receipt of the written request. The reasonable out-of-pocket costs of the operations review will be paid by the party requesting same. The recommendations of an operations review will not bind either party.

8.4 SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement shall be construed to adopt, but not to enlarge upon, all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provisions of said Constitution or laws,

the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

8.5 WAIVER. A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.

8.6 TERM OF AGREEMENT. This Agreement shall be in effect and shall constitute a binding obligation of the parties hereto from and after its execution by the last party to execute same and shall continue in effect for fifteen (15) years. Upon written notice not less than ninety (90) days prior to expiration, this Agreement may be renewed for an additional term of five (5) years.

8.7 PERIODIC REVIEW OF PROVISIONS. The parties shall hold periodic reviews of the provisions of this Agreement in order to provide for the changing needs of both parties, and to insure the Sewerage System meets all applicable state and federal requirements, as they may be promulgated or amended. The parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both parties. However, nothing herein shall prevent either party from proposing amendments to the other at any time during the term of this Agreement.

8.8 NOTICE OF COMPLETION OF DETERMINATION OF FINAL PROJECT COST. Within one hundred and eighty (180) days of the completion of a Project, Atlanta will notify Fulton of such completion and determination of final cost of the Project. Any overpayment or underpayment by Fulton shall be settled in lump sum not less than sixty (60) days after providing such notice.

8.9 RESOLUTION OF DISPUTES. Should there arise any issues or disputes related to this Agreement, the parties will in good faith attempt to resolve such issues or disputes promptly and amicably, and may by mutual agreement submit same to non-binding mediation.

8.10 FIRE AND EXTENDED INSURANCE COVERAGE. Atlanta shall obtain and maintain fire and extended coverage, flood, vandalism, and malicious mischief insurance coverage for its capital assets and personal property included in the Sewerage System, including boiler or pressure vessel explosion coverage and all other coverage reasonably necessary to adequately cover reasonably foreseeable risks, insuring the buildings' systems, equipment and other improvements and all additions, extensions, alterations and modification thereto in an amount equal to the full replacement value thereof, as such value shall be determined periodically by Atlanta. The cost of such coverage shall be allocated to the insured facility. Insurance in no way limits Atlanta's obligations as set forth in the terms of this Agreement.

8.11 DAMAGE OR DESTRUCTION OF FACILITIES. In the event of damage or destruction by fire or other casualty of the Sewerage System, Atlanta shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Any repair or rebuilding required hereunder shall be paid for with the proceeds of the insurance required under Article 8.10 and any remaining costs shall be paid by Atlanta, as the party obligated hereunder to obtain such insurance.

8.12 PERSONAL LIABILITY. No elected official, director, officer, or employee of either party shall be charged personally or held contractually liable by or to the other party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

8.13 RESPONSIBILITY OF PARTIES FOR SEWERAGE SYSTEM. Atlanta and Fulton shall be responsible for the maintenance, repair and operation of their respective components of the Sewerage System.

8.14. NO THIRD PARTY BENEFICIARY. No party not a signator to this Agreement shall be beneficiary of the rights and obligations there under.

8.15 TIME OF ESSENCE. Time is of the essence of this Agreement.

8.16 HEADINGS. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

8.17 ASSISTANCE. Atlanta and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Sewerage System.

8.18 NUMBER OF ORIGINAL DOCUMENTS. It is agreed between the parties that this Agreement shall be executed in two or more originals, all of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.

8.19 ASSIGNMENT OF AGREEMENT. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any party hereto except with the consent in writing of the other party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a party hereto of any obligation hereunder.

8.20 INTERGOVERNMENTAL AGREEMENT. The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

Fulton shall pay its financial obligations under this Agreement in accordance with the provisions of this Agreement, whether or not a Project, or any part thereof, has been completed,

is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction by offset and shall not be conditional upon the performance or non-performance by Atlanta of any other agreement or any other condition whatever.

8.21 DEFAULT. Failure of Fulton to pay Atlanta any of the payments required under this Agreement when due or failure of either party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such party. In any such event the non-defaulting party may, after complying with the provisions of Article 8.8, bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term or obligation of this Agreement against the other party.

8.22 NOTICE. All notices given pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton County shall be addressed as follows, unless otherwise directed in writing:

**County Manager**  
Fulton County Government Center  
141 Pryor Street, Suite 10061  
Atlanta, Georgia 30303

With a copy to the:

**Fulton County Department of Public Works**  
Fulton County Government Center  
141 Pryor Street, Sixth Floor  
Atlanta, Georgia 30303.

All notices to Atlanta shall be addressed as follows, unless otherwise directed in writing:

**Mayor**  
City of Atlanta  
55 Trinity Avenue, Suite 2400  
Atlanta, Georgia 30303-3520

With a copy to the:

**Commissioner**  
Department of Watershed Management  
55 Trinity Avenue, Suite 5400  
Atlanta, Georgia 30303-3520

IN WITNESS WHEREOF, the duly authorized officials of Atlanta and Fulton have caused the name of Atlanta and the name of Fulton and the seals of said political subdivisions and the signatures of their duly authorized executive officers to be affixed hereto on the dates indicated below.

ATTESTED:

CITY OF ATLANTA

\_\_\_\_\_(Seal)  
Municipal Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
Commissioner  
Department of Watershed Management

\_\_\_\_\_  
City Attorney

ATTESTED:

FULTON COUNTY

\_\_\_\_\_(Seal)  
Clerk to the Commission

By: \_\_\_\_\_  
Chairman,  
Board of Commissioners

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
Director, Department of Public Works

\_\_\_\_\_  
County Attorney



## LEGISLATIVE SUMMARY

### TO: CITY UTILITIES COMMITTEE

A RESOLUTION ESTABLISHING THE COMPENSATION LIMITS FOR PARSONS/US INFRASTRUCTURE, JV, FOR FC-7568-03, PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES FOR THE QUALITY OF LIFE BOND PROGRAM, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS, IN AN AMOUNT NOT TO EXCEED ONE MILLION EIGHT HUNDRED FIFTY ONE THOUSAND SIXTY FOUR DOLLARS AND THIRTEEN CENTS (\$1,851,064.13); ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, ACCOUNT AND CENTER NUMBERS: 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F076492BH (BRIDGE IMPROVEMENT DESIGN & CONSTRUCTION) (\$203,349.99), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65G017892BH (TRAFFIC SIGN DESIGN & CONSTRUCTION) (\$234,329.00), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F054292BH (SIDEWALK PROGRAM MANAGEMENT) (\$830,000.00), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) Y63F055492BH (STREETSCAPE DESIGN & CONSTRUCTION) (\$289,873.05), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) Y63F061092BH (GREENSPACE DESIGN & CONSTRUCTION) (\$284,728.03) AND 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F056092BH (INTERSECTION IMPROVEMENTS ADMIN. & PROG.) (\$8,784.06); AND FOR OTHER PURPOSES.

<b>Council Meeting Date:</b>	October 2, 2006
<b>Legislation Title:</b>	Program and Construction Management Services Year 2 Compensation Limits
<b>Requesting Dept.:</b>	Department of Public Works
<b>Contract Type:</b>	Services
<b>Source Selection:</b>	Pursuant to City of Atlanta Procurement and Real Estate Code Section 2-1189 Competitive Sealed Proposals
<b>Background:</b>	The Program and Construction Management Services for the Quality of Life Bond Program has delivered the services of contract year two (2) in a timely and efficient manner. It is necessary to establish compensation limits for the third year of the contract term.
<b>Justification:</b>	Parsons/US Infrastructure, J.V., has a contract with a base term of five (5) years, with one (1), one (1) year option. This resolution establishes the compensation limits for the third year of the term, at a not-to-exceed amount of \$1,851,064.13
<b>Term of Contract:</b>	The Agreement has a term of five (5) years, with one (1), one (1) year renewal option at the sole discretion of the City.

**Fund Account Centers:**

ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, ACCOUNT AND CENTER NUMBERS: 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F076492BH (BRIDGE IMPROVEMENT DESIGN & CONSTRUCTION) (\$203,349.99), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65G017892BH (TRAFFIC SIGN DESIGN & CONSTRUCTION) (\$234,329.00), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F054292BH (SIDEWALK PROGRAM MANAGEMENT) (\$830,000.00), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) Y63F055492BH (STREETSCAPE DESIGN & CONSTRUCTION) (\$289,873.05), 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) Y63F061092BH (GREENSPACE DESIGN & CONSTRUCTION) (\$284,728.03) AND 1C50 (2004 QUALITY OF LIFE FUND) 524001 (CONSULTANT/PROFESSIONAL SERVICES) M65F056092BH (INTERSECTION IMPROVEMENTS ADMIN. & PROG.) (\$8,784.06).

**Prepared By:**

Staci M. Wilbon

**Contact Number:**

(404) 330-6556

**CITY OF ATLANTA and FULTON COUNTY**  
**WASTEWATER SERVICES AGREEMENT**  
**FOR UTOY CREEK WATER RECLAMATION CENTER**

THIS WASTEWATER SERVICES AGREEMENT (this "Agreement"), entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia, hereinafter referred to as "Atlanta," and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "Fulton."

**W I T N E S S E T H:**

**WHEREAS**, each of the parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of sewerage in its respective jurisdiction to serve its citizens; and

**WHEREAS**, Atlanta owns and operates the Utoy Creek Water Reclamation Center, hereinafter referred to as "Utoy Creek"; and

**WHEREAS**, Atlanta has completed the Utoy Creek Administration and Laboratory Capital Improvement Project, hereinafter referred to as "Utoy Creek Administration and Laboratory Project" or "Past Project", to provide centralized operational control, administrative and laboratory functions at the Utoy Creek Water Reclamation Center; and

**WHEREAS**, Atlanta has completed Capital Improvement Projects at Utoy Creek for the reduction of phosphorus, hereinafter referred to as "Phosphorus Reduction Improvements" or "Past Project"; and

**WHEREAS**, the Georgia Department of Natural Resources, Environmental Protection Division, has mandated that watershed assessment and planning be conducted to support environmental regulatory action on wastewater discharges; and

**WHEREAS**, both parties agree that it is in their mutual interests to work cooperatively on wastewater management and watershed management in the Utoy Creek service area and

agree that the environmental management of the common watershed can be enhanced through regional cooperation; and

**WHEREAS**, the terms of this Agreement are intended to address the long term needs related to wastewater management; and

**WHEREAS**, the parties wish to set terms and conditions and provide procedures for the current and future use of Utoy Creek and future capital improvements to the Sewerage System, and to agree upon methods of determining and sharing current and future costs of capital improvements and expenses for operation and maintenance.

**NOW, THEREFORE**, in consideration of the mutual rights and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

In the construction of this Agreement, the following terms shall have the associated meanings and shall be construed as required by the following provisions, unless inconsistent with the manifest intent of the text:

1.1 **APPLICABLE INTEREST RATE**. The interest rate per annum, currently known as the "Discount Rate", set by the Federal Reserve Board representing the interest rate at which depository institutions borrow money from the Federal Reserve Bank of New York.

1.2 **BUSINESS DAY**. Each day excluding each Saturday, Sunday and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.

1.3 **CAPITAL IMPROVEMENTS**. Those additions, replacements or improvements to the Sewerage System, which, under generally accepted accounting principles or practices, are considered capital in nature, and which are made for the purpose of improving the Sewerage System or expanding the capacity of the Sewerage System.

1.4 COLLECTION SYSTEM. A component of the Sewerage System consisting of the sewer lines, storage, pump stations, and force mains which transport flows to a treatment facility or its influent pumping station.

1.5 DATE OF EXECUTION. The date on which the last party to this Agreement executes this Agreement.

1.6 DESIGN CAPACITY. Flow capacity in million gallons per day ("mgd") of a particular water pollution control or reclamation facility as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, which must be certified by an engineer licensed to practice in the State of Georgia, expressed as average daily flow, maximum month [average daily] flow, and peak wet weather flow; provided, however, as to any facility for which a permit from a regulatory body as to its maximum flow capacity is required, the "Design Capacity" of such facility shall not exceed such maximum permitted flow capacity.

1.7 COMMISSIONER OF ATLANTA WATERSHED MANAGEMENT. The Commissioner of the Department of Watershed Management of Atlanta, or whoever shall in the future perform those functions relative to this Agreement.

1.8 DIRECTOR OF PUBLIC WORKS. The Director of Public Works of Fulton, or whoever shall in the future perform those functions relative to this Agreement.

1.9 ESCROW AGENT. Shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent.

1.10 GOVERNING AUTHORITY. As applicable, the Mayor and City Council of the City of Atlanta, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.

1.11 NPDES PERMIT. National Pollution Discharge Elimination System Permit.

1.12 PROJECT. Any project consisting of capital improvements to the Sewerage System undertaken pursuant to this Agreement.

1.13 PROJECT COSTS. Any and all costs and expenses of a Project, including, without limitation, the costs of planning, design, engineering, architectural, and construction of the Project, the costs of plans and specifications, the costs necessary or incident to determining the feasibility or practicality of the Project, the costs of acquiring or condemning all lands, properties, rights, and easements acquired for the Project, the costs of all buildings, machinery and equipment included in the Project, the costs of insurance, financing charges and interest as applicable, the costs of compliance with environmental regulations and environmental protection, the costs of re-rating any facility, the costs of project construction management and construction engineering, administrative costs, legal fees and expenses, and such other costs as may be necessary or incident to the construction and equipping of the Project, and the placing of the Project in operation; provided, however, "Project Costs" shall not include any operating cost (as accepted by industry standard), any repair or routine maintenance cost, or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of the Constructing Party or such party's agent.

1.14 RATES. Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Atlanta. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale, inclusive of a capital component and operation and maintenance component based on no contribution to the Sewerage System ["Capital/O&M"]; and (3) wholesale, without a capital component and inclusive of operation and maintenance component based on a capital contribution to the Sewerage System ["O&M"]. Whenever Atlanta deems it necessary to revise its rates, Atlanta shall notify Fulton in writing not less than sixty (60) days prior to submittal of such revised rates to its Governing Authority for approval. Upon approval of such rates, Atlanta shall notify Fulton in writing by the first to occur: (a) thirty (30) days after

such approval by the respective Governing Authority or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Atlanta's sole authority to revise its rates. All documentation used in the cost of service studies shall be available to Fulton within ten (10) Business Days of written request thereof. Both parties shall use Fulton's current wholesale rates, until such time as Atlanta performs updated cost of service studies for wholesale rates, to be completed within a 12-month period following execution of this Agreement. The methodology for the cost of service study to set wholesale rates shall be as described in **Exhibit A** attached hereto. The results of the updated cost of service study shall be retroactively applied to this Agreement, with a maximum allowable increase of 50%. [Note: Current Fulton Wastewater rates are: (retail) \$4.99 per 1,000 gallons; (capital/O&M) \$3.50 per 1,000 gallons; (O&M) \$1.44 per 1,000 gallons].

1.15 RESERVED CAPACITY. The quantity of flow expressed as million gallons per day or thousand gallons per day purchased and allocated for use by Fulton of a particular water pollution control or reclamation facility or Project operated by Atlanta as determined by a percentage of total permitted capacity of Utoy Creek or Project.

1.16 REQUIRED FINANCIAL CONTRIBUTION. The dollar amount payable by Fulton to Atlanta with respect to each Project undertaken pursuant to this Agreement equal to (a) the sum of the Total Project Cost for the Project minus the total amount of all state and federal funds or other funds not derived from operations or pursuant to Article 1.14 received or to be received for such Project (b) multiplied by Fulton's Required Financial Contribution Percent.

1.17 REQUIRED FINANCIAL CONTRIBUTION PERCENT. The applicable percent specified in Article 2.1 or in an amendment to this Agreement for the applicable Project, or if no percent is so specified for any future Capital Improvement to an existing facility for which a Reserved Capacity is specified in this Agreement, the Required Financial Contribution Percent shall be the ratio of the Reserved Capacity to the Design Capacity of such facility.

1.18 SEWERAGE SYSTEM or SEWER SYSTEM. The physical system of sewers, pumping stations, force mains, storage and treatment facilities by which Atlanta and Fulton collect, convey, treat and discharge wastewater within the Utoy Creek service area. For purposes of this Agreement, the Utoy Creek service area is shown in **Exhibit B** attached hereto.

1.19 TOTAL PROJECT COST. The aggregate dollar amount of all Project Costs of a Project undertaken pursuant to this Agreement.

## **ARTICLE 2**

### **CURRENT AND PAST CAPITAL IMPROVEMENTS OF ATLANTA**

2.1 FULTON'S REQUIRED FINANCIAL CONTRIBUTION PERCENT FOR CURRENT PROJECTS. Not used in this Agreement.

2.2 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR CURRENT PROJECTS. Not used in this Agreement.

2.3 FULTON'S REQUIRED FINANCIAL CONTRIBUTION PERCENT FOR THE UTOY CREEK ADMINISTRATION AND LABORATORY AND PHOSPHORUS REDUCTION (PAST) PROJECTS. The parties agree that Fulton's Required Financial Contribution Percent for (a) the Utoy Creek Administration and Laboratory Project that was completed in 2004 is 15.9%, which is Fulton's weighted percentage of reserved capacity in Atlanta's three (3) wastewater treatment facilities, and (b) Atlanta's past capital Phosphorus Reduction Improvements at Utoy Creek is 20.83%, which is Fulton's percentage of reserved capacity of Utoy Creek.

2.3 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR ATLANTA'S PAST CAPITAL IMPROVEMENTS. The parties agree that Fulton's Required Financial Contribution for Atlanta's past Capital Improvements at Utoy Creek are as shown in **Exhibit C**. Atlanta acknowledges that Fulton as of the date of this Agreement has previously paid and Atlanta has received the sum of \$21,507,222 as Fulton's partial payment of its total obligation. Fulton shall make a single lump sum payment to Atlanta in the amount of \$19,924,936 representing the remaining portion of its required financial contribution



for Atlanta's past capital improvements, within 90 days of execution of this Agreement, as shown in **Exhibit C**.

**2.4 METHOD OF PAYMENT BY FULTON FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR ATLANTA'S PAST OPERATION AND MAINTENANCE EXPENSES.**

The parties agree that Fulton's Required Financial Contribution for Atlanta's past operation and maintenance expenses at Utoy Creek is \$0.0.

**ARTICLE 3**

**FUTURE CAPITAL IMPROVEMENTS OF ATLANTA**

**3.1 DETERMINATION TO MAKE FUTURE CAPITAL IMPROVEMENTS.** Atlanta may make necessary Capital Improvements to the Sewerage System from time to time, subject to approval by appropriate state or federal regulatory agencies, if excessive water loads or flows are impairing the efficient operation of the Sewerage System, if additional capacity is required, if such improvements are necessary to comply with the regulations or requirements of agencies of the State of Georgia, and/or agencies of the federal government, or if improved processes are available and the additions of said processes are necessary or desirable to provide operations which are more efficient and economical. Fulton agrees that the determination to make capital improvements for any one or more of the reasons aforementioned shall be made by Atlanta. For the purpose of long-range planning, the parties, acting by and through the Atlanta Commissioner of Watershed Management and the Fulton Director of Public Works, shall meet at least annually or more frequently as deemed necessary to determine whether additional capacity to serve both jurisdictions will be required, necessary, or desirable, for any facility which is part of the Sewerage System. The parties agree that any such meeting will be held within thirty (30) days of a written request thereof from either party.

**3.2 NOTICE AND METHOD OF PAYMENT.** Upon the determination that Capital Improvements to the Sewerage System are necessary, desirable or appropriate pursuant to

Article 3.1, Atlanta shall provide written notice to Fulton of such determination, which notice also shall include Atlanta's current estimate of the Total Project Cost of the Project and its calculation of the Required Financial Contribution from Fulton for such Project. Fulton shall respond in writing acknowledging such notice within 30 days after the date such notice is received. Also, within at least 90 days prior to scheduled award of any Project contract, Fulton shall deposit its Required Financial Contribution in lump sum with a third party Escrow Agent which shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent. The escrow deposit agreement shall provide (a) that the funds in escrow will be invested as directed in writing by Fulton, (b) that all investment earnings shall be paid to or at the direction of Fulton, (c) that the Escrow Agent shall disburse the escrowed funds monthly upon receipt of a written requisition from Atlanta certifying as to the Project Costs incurred on the applicable Project for which Fulton's applicable Required Financial Contribution has not then been paid (and which will not be paid with state or federal funds) and certifying as to the dollar amount of Fulton's Required Financial Contribution with respect to such requisition, (d) that upon any change orders or other changes in the estimated Total Project Cost of the applicable Project, Atlanta shall give written notice of the same to Fulton and the Escrow Agent, and Fulton's Required Financial Contribution with respect to any such change of the estimated Total Project Cost shall be reflected in escrow with the Escrow Agent pursuant to the escrow deposit agreement within ninety (90) days of receipt of notice of such change, and (e) that Atlanta shall give written notice to Fulton and the Escrow Agent of completion of the applicable Project, and upon receipt of such completion notice the Escrow Agent shall return to Fulton any un-disbursed money and investment earnings held in escrow with respect to the completed Project.. During the course of the Project's construction and upon completion of the Project, adjustments to the estimated Total Project Cost shall be made in accordance with Articles 4.2 and 4.3.

## **ARTICLE 4**

### **PAYMENTS AND OWNERSHIP**

4.1 **FAILURE TO RESPOND.** In the event Fulton fails to respond in writing and/or fails to deposit the required funds with the Escrow Agent in accordance with Article 3 of this Agreement, such failure shall be deemed a material breach of this Agreement and all remedies set forth in this Agreement, including the provisions of Article 4.3 (interest), shall be available to Atlanta.

4.2 **ADJUSTMENT OF PAYMENTS.** Atlanta and Fulton agree that the calculation of the Total Project Cost for future Capital Improvements and Fulton's Required Financial Contribution with respect thereto are estimates, and that circumstances may arise that cause a change to such estimates. In such event, Atlanta shall notify Fulton in writing of the change of the estimated Total Project Cost amount and the change of its Required Financial Contribution as a result, and Fulton shall pay its Required Financial Contribution with respect to any such increase of the estimated Total Project Cost within sixty (60) days of receipt of notice of such change by lump sum to the Escrow Agent. After (a) Atlanta initiates any capital improvement pursuant to this Agreement and has certified that construction of the Project has been completed in accordance with approved plans and specifications, (b) final payment of all federal or state grant money due Atlanta, if any, (c) final payment to the construction contractor(s) and resolution of any appropriate construction claims (excluding claims stemming from a negligent or intentional act or omission of Atlanta), and (d) Atlanta has determined the final Total Project Cost of the Project, then the mathematical adjustment of the total Required Financial Contribution payable by Fulton shall be made. Any payment required from either party as a result of such adjustment of the total Required Financial Contribution shall be made by such party within 60 days of receipt of notice of the final Total Project Cost and shall be made in accordance with Article 3.2.

4.3 FAILURE TO PAY WHEN DUE. In the event of any failure to pay when due any amount due under this Agreement, interest shall automatically accrue on such delinquent amount in accordance with Article 8.2 from the date such payment is due until full payment of such delinquent amount and accrued interest thereon is made.

4.4 OWNERSHIP OF SEWERAGE SYSTEM. Fulton agrees that the payment of its Required Financial Contribution for any current or future Project undertaken pursuant to this Agreement and payment of the rates assessed for its flow through Utoy Creek constitute consideration paid for Fulton's contractual right to use Utoy Creek, in the amount of its Reserved Capacity therein, and does not constitute consideration paid for any ownership right, ownership interest, indicia of ownership or other property right in Utoy Creek. Fulton's use of Utoy Creek in the amount of its Reserved Capacity specified herein shall not constitute any transfer of any ownership rights, ownership interests or other property rights in Utoy Creek.

## **ARTICLE 5**

### **USE OF FACILITIES**

#### **5.1 FULTON'S RIGHT TO USE OF UTOY CREEK.**

5.1.1 PAST CAPITAL IMPROVEMENTS. Subject to Article 2.3 and 2.4 of this Agreement and payment of the amount shown in **Exhibit C**, Fulton's Reserved Capacity in Utoy Creek is:

	Design Capacity (MGD)	Fulton's Reserved Capacity (Percent)	Fulton's Reserved Capacity (MGD)
Average Daily Flow	36	20.83%	7.50
Maximum Month Daily Flow	44	20.83%	9.20
Peak Wet Weather Flow	90	20.83%	18.75

5.1.2 CURRENT CAPITAL IMPROVEMENTS. Fulton's timely payment of applicable treatment rates (currently \$1.44 per 1,000 gallons) for its use of Utoy Creek pursuant

to this Agreement will entitle Fulton to continue to discharge in the future no more than the respective Reserved Capacity of flow to Utoy Creek as identified in Article 5.1.1.

5.1.3 RE-RATING OF RESERVED CAPACITY. The percentage of reserved capacity allocated to Fulton for Utoy Creek may not be increased or decreased except by amendment of this Agreement. Notwithstanding the provisions of Article 5.1.2, in the event that reserved capacity of Utoy Creek is re-rated through orders, permits or other federal or state regulatory requirements, Fulton's percentage of reserved capacity will remain unchanged, but the actual reserve capacity will be increased or decreased proportionally. An amendment to this Agreement shall be implemented to reflect such re-rating.

5.2. DETERMINATION AND PAYMENT OF APPLICABLE RATES. Fulton agrees to pay for its flow usage at an established rate (currently \$1.44 per 1,000 gallons) that reflects the cost of service being provided as established and revised from time to time in accordance with Article 1.14. Said rate for flows exceeding the Reserved Capacity, for future flows only, shall be at the wholesale rate (currently \$3.50 per 1,000 gallons) inclusive of a capital component (based on no previous capital contribution to the Sewerage System; O&M/capital). Payments shall be due within thirty days of receipt of such billing.

Atlanta will charge and Fulton will pay for wastewater services at Atlanta's established rates that are in effect on the effective date of this Agreement ("Initial Rate"). The Initial Rate will be in effect until a new rate has been established based on an agreed upon utility industry standard cost of service methodology that Atlanta will follow in determining wholesale rates ("New Rate"). If Atlanta completes its cost of service study and gains approval by its Governing Authority within the initial 12-month period following execution of this Agreement ("Initial 12-Month Period"), then the New Rate will be applied retroactively beginning with the effective date of this Agreement. If Atlanta does not complete its cost of service study and gain approval by its Governing Authority within the Initial 12-Month Period, the Initial Rate will continue to be in effect during the Initial 12-Month Period and the opportunity for retroactive rate adjustment will

be forfeited. Any New Rate that is applied retroactively during the Initial 12-Month Period shall not be greater than 150% of the Initial Rate. However, nothing herein is intended to be construed as affecting Atlanta's sole authority to revise its rates.

5.3 DETERMINATION OF FLOWS. The basis for billing shall be metered flow volumes wherever possible. Meters shall be calibrated no less often than quarterly, and appropriate calibration records shall be retained for not less than three (3) years. Fulton shall have the opportunity to observe the calibration process, test the calibration equipment and review the calibration records of Atlanta upon written request. Any meter tested and found to be accurate within ten percent shall be considered accurate for billing purposes. Where metering stations are not feasible or a dispute arises with respect to the accuracy or appropriateness of metering results, Atlanta's Commissioner of Watershed Management and Fulton's Director of Public Works shall mutually agree on an appropriate resolution.

5.4 PROVISION OF DATA. Both parties agree to provide flow data, or, if flow is not metered, water consumption within the service area and population data to the other as may be reasonably requested in writing by the other party within ten (10) business days following receipt of each such request.

5.5 CHANGES IN CAPACITY. Fulton may request additional Reserved Capacity in Utoy Creek. Any increase of Reserved Capacity shall require the adjustment of the Required Financial Contribution Percent for the Total Project Cost of any future capital improvements to such facility. The percentage of Reserved Capacity and the parallel Required Financial Contribution Percent may not, however, be increased or decreased except by formal written amendment of this Agreement.

5.6 FUTURE EXCESS FLOW. When the average daily flow received from Fulton to Utoy Creek based on a 60-day reporting period reaches 90% of the Reserved Capacity for such facility, Fulton must prepare and submit to Atlanta a written plan which demonstrates how future flows will be maintained within the Reserved Capacity. Should Fulton's flow received at Utoy

Creek exceed its then-current Reserved Capacity, Fulton shall immediately take appropriate measures to reduce its flow to within its Reserved Capacity. Continued discharge in excess of the Reserved Capacity, without prior written approval by Atlanta, calculated as a daily average over 60 days time, will be considered a material breach of this Agreement, for which Atlanta is entitled to one or more of the following remedies, none of which shall be an exclusive remedy: (a) immediate payment of the applicable rate set forth in Article 5.2 with respect to the Reserved Capacity flow and the flow in excess of the Reserved Capacity plus a surcharge rate equal to 25% of the then current rate applicable to the excess flow, (b) payment (or reimbursement) of any and all damages claimed by third parties directly related to such excess flow, (c) immediate payment (or reimbursement) of any and all civil penalties and fines imposed by regulatory agencies or courts of law directly attributed to such excess flow, (d) interest on any aforesaid amount not paid when due pursuant hereto at the Applicable Interest Rate calculated in accordance with Article 8.2, and (e) any and all other remedies available at law or in equity. Any amount payable pursuant to this Article 5.6 shall be paid by Fulton within fifteen (15) days following written demand thereof. The obligation to pay the applicable rate plus surcharge shall arise in the event that Fulton's flows to Utoy Creek exceed those set forth in Article 5.1.1.

## **ARTICLE 6**

### **COLLECTION SYSTEM.**

6.1 **FULTON'S RIGHTS.** Fulton shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fulton.

6.2 **ATLANTA'S RIGHTS.** Atlanta shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Atlanta.

6.3 **CHARGES FOR CONNECTIONS.** Fulton shall have the right to determine and impose charges for connections permitted or made to the Collection System within its sewer service boundaries. This right shall include the right to contract with other sewer service provider(s) for the use of the Sewerage System within its sewer service boundaries, provided

that Fulton shall not permit by contract the discharge of flow which will result in Fulton exceeding its maximum Reserved Capacity flow to Utoy Creek as set forth in Article 5 hereof.

6.4 OPERATION AND MAINTENANCE. Fulton and Atlanta shall be responsible for operations and maintenance of the collection systems located within their respective sewer service boundaries.

## **ARTICLE 7**

### **SEWER USE ORDINANCES AND INDUSTRIAL PRETREATMENT PROGRAMS**

7.1 RESPONSIBILITIES. Each party will be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within its jurisdictional limits.

7.2 REVISIONS. Fulton will amend and/or revise its sewer use ordinance and industrial pretreatment program to comply with all state and federal requirements and will accept and implement reasonable changes to such ordinance and program requested in writing by Atlanta with respect to control of discharges which ultimately will be treated at Utoy Creek. When required for compliance with Atlanta's NPDES permit, Fulton will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Atlanta.

7.3 ENFORCEMENT AND PERMITTING. Fulton agrees to diligently enforce its sewer use ordinance and industrial pretreatment program for users of its portion of the Sewerage System. Fulton will issue permits to all industrial dischargers within its jurisdictional limits as required by the ordinance and pretreatment program and will monitor compliance with the permits. A written report of non-compliant discharges within Fulton's jurisdiction tributary to Utoy Creek will be provided by Fulton if any such non-compliance occurs.

7.4 FAILURE TO ENFORCE. In the event Fulton fails to take reasonable pretreatment enforcement action on a timely basis, Atlanta may take whatever action by law it is authorized to take.



7.5 OTHER JURISDICTIONS. Before an industrial user located outside the jurisdictional boundaries of Fulton discharges wastewater through the Fulton Sewerage System into the Atlanta Sewerage System for treatment at Utoy Creek, Fulton will enter into an agreement with the jurisdiction in which such industrial user is located. The terms of such agreement shall be substantially equivalent to the applicable terms of this Agreement, and such agreement must be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

7.6 ANNUAL REPORTS. Fulton will submit a written annual report to Atlanta on the compliance status of each significant industrial user and any enforcement response taken or anticipated. Each such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

7.7 EMERGENCY ACTION. Atlanta, acting as an agent of Fulton, may take emergency action to stop or prevent any discharge into its Sewerage System for treatment at Utoy Creek that is generated in, or transported through Fulton, when in the reasonable opinion of Atlanta such damage presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, or contamination to Atlanta's Sewerage System. Atlanta agrees to provide such notice as is practicable to the sewer user and Fulton of its intent to take emergency action prior to taking action; provided, however, it is understood and agreed the opportunity to respond to such action or anticipated action may be limited to a hearing after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

## **ARTICLE 8**

### **PROVISIONS OF GENERAL APPLICATION.**

8.1 RIGHT TO SEEK SPECIFIC PERFORMANCE. The parties agree that the costs and damages resulting from a breach of the contractual rights to use the Sewerage System facilities up to the specified amounts granted by this Agreement may not be susceptible of

monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy and the provisions of Article 8.9 have been complied with, either party shall be entitled to specific performance or any other equitable remedies provided by law.

8.2 RATE OF INTEREST. Whenever this Agreement provides for the accrual and payment of interest on sums to be paid by one party to the other, such interest shall be calculated at the Applicable Interest Rate or Rates as defined in Article 1.1 in effect during the period for which interest is due. Interest shall be calculated at the Applicable Interest Rate based upon the total number of calendar days during which the applicable amounts remain unpaid, including the original due date of the delinquent payment and excluding the day on which the amount (including accrued interest) is paid in full.

8.3 OPERATIONS REVIEW. Both parties agree that, upon receipt by one party of a written request from the other party for an operations review, an operations review to determine the status of the operation, maintenance and personnel needs of any component of the Sewerage System, as well as the efficiency, management, reliability and operational cost-effectiveness of any component of the Sewerage System, shall be completed and a written report of such review and the resulting recommendations shall be delivered to the requesting party within ninety (90) days following receipt of the written request. The reasonable out-of-pocket costs of the operations review will be paid by the party requesting same. The recommendations of an operations review will not bind either party.

8.4 SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement shall be construed to adopt, but not

to enlarge upon, all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provisions of said Constitution or laws, the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

8.5 WAIVER. A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.

8.6 TERM OF AGREEMENT. This Agreement shall be in effect and shall constitute a binding obligation of the parties hereto from and after its execution by the last party to execute same and shall continue in effect for fifteen (15) years. Upon written notice not less than ninety (90) days prior to expiration, this Agreement may be renewed for an additional term of five (5) years.

8.7 PERIODIC REVIEW OF PROVISIONS. The parties shall hold periodic reviews of the provisions of this Agreement in order to provide for the changing needs of both parties, and to insure the Sewerage System meets all applicable state and federal requirements, as they may be promulgated or amended. The parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both parties. However, nothing herein shall prevent either party from proposing amendments to the other at any time during the term of this Agreement.

8.8 NOTICE OF COMPLETION OF DETERMINATION OF FINAL PROJECT COST. Within one hundred and eighty (180) days of the completion of a project, Atlanta will notify Fulton of such completion and determination of final cost of the project. Any overpayment or underpayment by Fulton shall be settled in lump sum not less than sixty (60) days after providing such notice.

8.9 RESOLUTION OF DISPUTES. Should there arise any issues or disputes related to this Agreement, the parties will in good faith attempt to resolve such issues or disputes promptly and amicably, and may by mutual agreement submit same to non-binding mediation.

8.10 FIRE AND EXTENDED INSURANCE COVERAGE. Atlanta shall obtain and maintain fire and extended coverage, flood, vandalism, and malicious mischief insurance coverage for its capital assets and personal property included in the Sewerage System, including boiler or pressure vessel explosion coverage and all other coverage reasonably necessary to adequately cover reasonably foreseeable risks, insuring the buildings' systems, equipment and other improvements and all additions, extensions, alterations and modification thereto in an amount equal to the full replacement value thereof, as such value shall be determined periodically by Atlanta. The cost of such coverage shall be allocated to the insured facility. Insurance in no way limits Atlanta's obligations as set forth in the terms of this Agreement.

8.11 DAMAGE OR DESTRUCTION OF FACILITIES. In the event of damage or destruction by fire or other casualty of the Sewerage System, Atlanta shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Any repair or rebuilding required hereunder shall be paid for with the proceeds of the insurance required under Article 8.10 and any remaining costs shall be paid by Atlanta, as the party obligated hereunder to obtain such insurance.

8.12 PERSONAL LIABILITY. No elected official, director, officer, or employee of either party shall be charged personally or held contractually liable by or to the other party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

8.13 RESPONSIBILITY OF PARTIES FOR SEWERAGE SYSTEM. Atlanta and Fulton shall be responsible for the maintenance, repair and operation of their respective components of the Sewerage System.

8.14 No party not a signator to this Agreement shall be beneficiary of the rights and obligations thereunder.

8.15 TIME OF ESSENCE. Time is of the essence of this Agreement.

8.16 HEADINGS. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

8.17 ASSISTANCE. Atlanta and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Sewerage System.

8.18 NUMBER OF ORIGINAL DOCUMENTS. It is agreed between the parties that this Agreement shall be executed in two or more originals, all of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.

8.19 ASSIGNMENT OF AGREEMENT. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any party hereto except with the consent in writing of the other party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a party hereto of any obligation hereunder.

8.20 INTERGOVERNMENTAL AGREEMENT. The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

Fulton shall pay its financial obligations under this Agreement in accordance with the provisions of this Agreement, whether or not a Project, or any part thereof, has been completed,

is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction by offset and shall not be conditional upon the performance or non-performance by Atlanta of any other agreement or any other condition whatever.

8.21 DEFAULT. Failure of Fulton to pay Atlanta any of the payments required under this Agreement when due or failure of either party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such party. In any such event the non-defaulting party may, after complying with the provisions of Article 8.8, bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term or obligation of this Agreement against the other party.

8.22 NOTICE. All notices given pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton County shall be addressed as follows, unless otherwise directed in writing:

**County Manager**  
Fulton County Government Center  
141 Pryor Street, Suite 10061  
Atlanta, Georgia 30303

With a copy to the:

**Director**  
**Fulton County Department of Public Works**  
Fulton County Government Center  
141 Pryor Street, Sixth Floor  
Atlanta, Georgia 30303.

All notices to Atlanta shall be addressed as follows, unless otherwise directed in writing:

**Mayor**  
City of Atlanta  
55 Trinity Avenue, Suite 2400  
Atlanta, Georgia 30303-3520

With a copy to the:

**Commissioner**  
Department of Watershed Management  
55 Trinity Avenue, Suite 5400  
Atlanta, Georgia 30303-3520

IN WITNESS WHEREOF, the duly authorized officials of Atlanta and Fulton have caused the name of Atlanta and the name of Fulton and the seals of said political subdivisions and the signatures of their duly authorized executive officers to be affixed hereto on the dates indicated below.

**ATTESTED:**

**CITY OF ATLANTA**

\_\_\_\_\_(Seal)  
**Municipal Clerk**

By: \_\_\_\_\_  
**Mayor**

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Commissioner  
Department of Watershed Management**

\_\_\_\_\_  
**City Attorney**

**ATTESTED:**

**FULTON COUNTY**

\_\_\_\_\_(Seal)  
**Clerk to the Commission**

By: \_\_\_\_\_  
**Chairman,  
Board of Commissioners**

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM**

\_\_\_\_\_  
**Director, Department of Public Works**

\_\_\_\_\_  
**County Attorney**



**CITY OF ATLANTA and FULTON COUNTY**  
**WASTEWATER SERVICES AGREEMENT**  
**FOR CAMP CREEK WATER RECLAMATION FACILITY**

THIS WASTEWATER SERVICES AGREEMENT (this "Agreement"), entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia, hereinafter referred to as "Atlanta," and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "Fulton."

**W I T N E S S E T H:**

**WHEREAS**, each of the parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of sewerage in its respective jurisdiction to serve its citizens; and

**WHEREAS**, Fulton owns and operates the Camp Creek Water Reclamation Facility, hereinafter referred to as "Camp Creek"; and

**WHEREAS**, Fulton, has completed the expansion, replacement and upgrade of Camp Creek, and has improved its operational efficiency and reliability to a design capacity of 24 MGD, hereinafter referred to as "Replacement Camp Creek" or "Current Project"; and

**WHEREAS**, Fulton has completed projects at Camp Creek that increased its capacity to 13 mgd, hereinafter referred to as "Past Project", and

**WHEREAS**, the Georgia Department of Natural Resources, Environmental Protection Division, has mandated that watershed assessment and planning be conducted to support environmental regulatory action on wastewater discharges; and

**WHEREAS**, both parties agree that it is in their mutual interests to work cooperatively on wastewater management and watershed management in the Camp Creek service area and agree that the environmental management of the common watershed can be enhanced through regional cooperation; and

**WHEREAS**, the terms of this Agreement are intended to address the long term needs related to wastewater management; and

**WHEREAS**, the parties wish to set terms and conditions and provide procedures for the current and future use of Camp Creek and future capital improvements to the Sewerage System, and to agree upon methods of determining and sharing current and future costs of capital improvements, and expenses for operation and maintenance.

**NOW, THEREFORE**, in consideration of the mutual rights and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

In the construction of this Agreement, the following terms shall have the associated meanings and shall be construed as required by the following provisions, unless inconsistent with the manifest intent of the text:

1.1 **APPLICABLE INTEREST RATE**. The interest rate per annum, currently known as the "Discount Rate", set by the Federal Reserve Board representing the interest rate at which depository institutions borrow money from the Federal Reserve Bank of New York.

1.2 **BUSINESS DAY**. Each day excluding each Saturday, Sunday and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.

1.3 **CAPITAL IMPROVEMENTS**. Those additions, replacements or improvements to the Sewerage System, which, under generally accepted accounting principles or practices, are considered capital in nature, and which are made for the purpose of improving the Sewerage System or expanding the capacity of the Sewerage System.

1.4 COLLECTION SYSTEM. A component of the Sewerage System consisting of the sewer lines, storage, pump stations, and force mains which transport flows to a treatment facility or its influent pumping station.

1.5 DATE OF EXECUTION. The date on which the last party to this Agreement executes this Agreement.

1.6 DESIGN CAPACITY. Flow capacity in million gallons per day ("mgd") of a particular water pollution control or reclamation facility as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, which must be certified by an engineer licensed to practice in the State of Georgia, expressed as average daily flow, maximum month [average daily] flow, and peak wet weather flow; provided, however, as to any facility for which a permit from a regulatory body as to its maximum flow capacity is required, the "Design Capacity" of such facility shall not exceed such maximum permitted flow capacity.

1.7 COMMISSIONER OF ATLANTA WATERSHED MANAGEMENT. The Commissioner of the Department of Watershed Management of Atlanta, or whoever shall in the future perform those functions relative to this Agreement.

1.8 DIRECTOR OF PUBLIC WORKS. The Director of Public Works of Fulton or whoever shall in the future perform those functions relative to this Agreement.

1.9 ESCROW AGENT. Shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent.

1.10 GOVERNING AUTHORITY. As applicable, the Mayor and City Council of the City of Atlanta, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.

1.11 NPDES PERMIT. National Pollution Discharge Elimination System Permit.

1.12 PROJECT. Any project consisting of capital improvements to the Sewerage System undertaken pursuant to this Agreement.

1.13 PROJECT COSTS. Any and all costs and expenses of a Project, including, without limitation, the costs of planning, design, engineering, architectural, and construction of the Project, the costs of plans and specifications, the costs necessary or incident to determining the feasibility or practicality of the Project, the costs of acquiring or condemning all lands, properties, rights, and easements acquired for the Project, the costs of all buildings, machinery and equipment included in the Project, the costs of insurance, financing charges and interest as applicable, the costs of compliance with environmental regulations and environmental protection, the costs of re-rating any facility, the costs of project construction management and construction engineering, administrative costs, legal fees and expenses, and such other costs as may be necessary or incident to the construction and equipping of the Project, and the placing of the Project in operation; provided, however, "Project Costs" shall not include any operating cost (as accepted by industry standard), any repair or routine maintenance cost, or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of the Constructing Party or such party's agent.

1.14 RATES. Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Fulton. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale, inclusive of a capital component and operation and maintenance component based on no contribution to the Sewerage System ["Capital/O&M"]; and (3) wholesale, without a capital component and inclusive of operation and maintenance component based on a capital contribution to the Sewerage System ["O&M"]. Whenever Fulton deems it necessary to revise its rates, Fulton shall notify Atlanta in writing not less than sixty (60) days prior to submittal of such revised rates to its Governing Authority for approval. Upon approval of such rates, Fulton shall notify Atlanta in writing by the first to occur: (a) thirty (30) days after

such approval by the respective Governing Authority or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Fulton's sole authority to revise its rates. All documentation used in the cost of service studies shall be available to Atlanta within ten (10) Business Days of written request thereof [Note: Current Fulton Wastewater rates: (retail) \$4.99 per 1,000 gallons; (capital/O&M) \$3.50 per 1,000 gallons; (O&M) \$1.44 per 1,000 gallons]. Both parties shall use Fulton's current wholesale rates, until such time as Atlanta performs updated cost of service studies for wholesale rates, to be completed within a 12-month period following execution of this Agreement. The methodology for the cost of service study to set wholesale rates shall be as described in **Exhibit A** attached hereto. The results of the updated cost of service study shall be retroactively applied to this Agreement, with a maximum allowable increase of 50%.

1.15 RESERVED CAPACITY. The quantity of flow expressed as million gallons per day or thousand gallons per day purchased and allocated for use by Atlanta of a particular water pollution control or reclamation facility or Project operated by Fulton as determined by a percentage of total permitted capacity of Camp Creek or Project.

1.16 REQUIRED FINANCIAL CONTRIBUTION. The dollar amount payable by Atlanta to Fulton with respect to each Project undertaken pursuant to this Agreement equal to (a) the sum of the Total Project Cost for the Project minus the total amount of all state and federal funds or other funds not derived from operations or pursuant to Article 1.14 received or to be received for such Project (b) multiplied by Atlanta's Required Financial Contribution Percent.

1.17 REQUIRED FINANCIAL CONTRIBUTION PERCENT. The applicable percent specified in Article 2.1 or in an amendment to this Agreement for the applicable Project, or if no percent is so specified for any future capital improvement to an existing facility for which a Reserved Capacity is specified in this Agreement, the Required Financial Contribution Percent shall be the ratio of the Reserved Capacity to the Design Capacity of such facility.

1.18 SEWERAGE SYSTEM or SEWER SYSTEM. The physical system of sewers, pumping stations, force mains, storage and treatment facilities by which Atlanta and Fulton collect, convey, treat and discharge wastewater within the Camp Creek service area. For purposes of this Agreement, the Camp Creek Service Area is shown in **Exhibit B** attached hereto.

1.19 TOTAL PROJECT COST. The aggregate dollar amount of all Project Costs of a Project undertaken pursuant to this Agreement.

## ARTICLE 2

### CURRENT AND PAST CAPITAL IMPROVEMENTS OF FULTON

2.1 ATLANTA'S REQUIRED FINANCIAL CONTRIBUTION PERCENT FOR REPLACEMENT (CURRENT) CAMP CREEK. The parties agree that Atlanta's Required Financial Contribution Percent for the Replacement Camp Creek Project that was completed on June 29, 2005 is 15.0% (3.60 mgd) of Camp Creek's expanded capacity of 24 mgd.

2.2 METHOD OF PAYMENT BY ATLANTA FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR REPLACEMENT (CURRENT) CAMP CREEK. The parties agree that Atlanta's Required Financial Contribution for Replacement Camp Creek is equal to (a) the sum of the applicable Total Project Cost minus the total of all state and federal funds received or to be received for the respective Project (b) multiplied by the respective Required Financial Contribution Percent set forth in Article 2.1.

The parties agree that the estimated Total Project Cost for expansion and replacement of Camp Creek is \$88,148,891 and that Atlanta's Required Financial Contribution for Replacement as of the date of execution of this Agreement is \$13,222,334. (See Exhibit C). Atlanta shall make a single lump sum payment to Fulton in the amount of \$13,222,334, representing its required financial contribution for Fulton's Replacement Camp Creek within 90 days of the execution date of this Agreement.

2.3 METHOD OF PAYMENT BY ATLANTA FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR FULTON'S PAST CAPITAL IMPROVEMENTS. The parties agree that Atlanta's Required Financial Contribution for Fulton's Past Capital Improvements at Camp Creek is as shown in **Exhibit D**. Atlanta shall make a single lump sum payment to Fulton in the amount of \$3,537,180, representing its Required Financial Contribution for Fulton's past capital improvements, within 90 days of execution of this Agreement.

2.4 METHOD OF PAYMENT BY ATLANTA FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR FULTON'S PAST OPERATION AND MAINTENANCE EXPENSES. The parties agree that Atlanta's Required Financial Contribution for Fulton's past operation and maintenance expenses at Camp Creek and Long Island Pump Station is \$13,234,330 as shown in **Exhibit E**. The current past due operation and maintenance expenses are broken down as follows: \$11,226,480 for Camp Creek through October 31, 2005, and \$2,007,850 for Long Island through August 31, 2005.

Atlanta shall make a single lump sum payment to Fulton of its Required Financial Contribution for Fulton's past operation within 90 days of execution of this Agreement, and subsequent billings that will bring account current to date of this Agreement.

### ARTICLE 3

#### FUTURE CAPITAL IMPROVEMENTS OF FULTON

3.1 DETERMINATION TO MAKE FUTURE CAPITAL IMPROVEMENTS. Fulton may make necessary Capital Improvements to the Sewerage System from time to time, subject to approval by appropriate state or federal regulatory agencies, if excessive water loads or flows are impairing the efficient operation of the Sewerage System, if additional capacity is required, if such improvements are necessary to comply with the regulations or requirements of agencies of the State of Georgia, and/or agencies of the federal government, or if improved processes are available and the additions of said processes are necessary or desirable to provide operations which are more efficient and economical. Atlanta agrees that the determination to make capital

improvements for any one or more of the reasons aforementioned shall be made by Fulton. For the purpose of long-range planning, the parties, acting by and through the Atlanta Commissioner of Watershed Management and the Fulton Director of Public Works, shall meet at least annually or more frequently as deemed necessary to determine whether additional capacity to serve both jurisdictions will be required, necessary, or desirable, for any facility which is part of the Sewerage System. The parties agree that any such meeting will be held within thirty (30) days of a written request thereof from either party.

3.2 NOTICE AND METHOD OF PAYMENT. Upon the determination that Capital Improvements to the Sewerage System are necessary, desirable or appropriate pursuant to Article 3.1, Fulton shall provide written notice to Atlanta of such determination, which notice also shall include Fulton's current estimate of the Total Project Cost of the Project and its calculation of the Required Financial Contribution from Atlanta for such Project. Atlanta shall respond in writing acknowledging such notice within 30 days after the date such notice is received. Also, within at least 90 days prior to scheduled award of any Project contract, Atlanta shall deposit its Required Financial Contribution in lump sum with a third party Escrow Agent, which shall be a state-chartered or federally chartered bank having a reported combined capital, surplus and undivided profits of at least \$50,000,000 pursuant to an escrow deposit agreement among the parties hereto and such Escrow Agent. The escrow deposit agreement shall provide (a) that the funds in escrow will be invested as directed in writing by Atlanta; (b) that all investment earnings shall be paid to or at the direction of Atlanta; (c) that the Escrow Agent shall disburse the escrowed funds monthly upon receipt of a written requisition from Fulton certifying as to the Project Costs incurred on the applicable Project for which Atlanta's applicable Required Financial Contribution has not then been paid (and which will not be paid with state or federal funds) and certifying as to the dollar amount of Atlanta's Required Financial Contribution with respect to such requisition; (d) that upon any change orders or other changes in the estimated Total Project Cost of the applicable Project, Fulton shall give written notice of the same to



Atlanta and the Escrow Agent, and Atlanta's Required Financial Contribution with respect to any such change of the estimated Total Project Cost shall be reflected in escrow with the Escrow Agent pursuant to the escrow deposit agreement within ninety (90) days of receipt of notice of such change; and (e) that Fulton shall give written notice to Atlanta and the Escrow Agent of completion of the applicable Project, and upon receipt of such completion notice the Escrow Agent shall return to Atlanta any un-disbursed money and investment earnings held in escrow with respect to the completed Project. During the course of the Project's construction and upon completion of the Project, adjustments to the estimated Total Project Cost shall be made in accordance with Articles 4.2 and 4.3.

#### **ARTICLE 4**

##### **PAYMENTS AND OWNERSHIP**

4.1 **FAILURE TO RESPOND.** In the event Atlanta fails to respond in writing and/or fails to deposit the required funds with the Escrow Agent in accordance with Article 3 of this Agreement, such failure shall be deemed a material breach of this Agreement and all remedies set forth in this Agreement, including the provisions of Article 4.3 (interest) shall be available to Fulton.

4.2 **ADJUSTMENT OF PAYMENTS.** Atlanta and Fulton agree that the calculation of the Total Project Cost for future Capital Improvements and Atlanta's Required Financial Contribution with respect thereto are estimates, and that circumstances may arise that cause a change to such estimates. In such event, Fulton shall notify Atlanta in writing of the change of the estimated Total Project Cost amount and the change of its Required Financial Contribution as a result, and Atlanta shall pay Fulton its Required Financial Contribution with respect to any such increase of the estimated Total Project Cost within sixty (60) days of receipt of notice of such change by lump sum to the Escrow Agent. After (a) Fulton initiates any capital improvement pursuant to this Agreement and has certified that construction of the Project has been completed in accordance with approved plans and specifications; (b) final payment of all

federal or state grant money due Fulton, if any; (c) final payment to the construction contractor(s) and resolution of any appropriate construction claims (excluding claims stemming from a negligent or intentional act or omission of Fulton), and; (d) Fulton has determined the final Total Project Cost of the Project, then the mathematical adjustment of the total Required Financial Contribution payable by Atlanta shall be made. Any payment required from either party as a result of such adjustment of the total Required Financial Contribution shall be made by such party within 60 days of receipt of notice of the final Total Project Cost and shall be made in accordance with Article 3.2.

4.3 FAILURE TO PAY WHEN DUE. In the event of any failure to pay when due any amount due under this Agreement, interest shall automatically accrue on such delinquent amount in accordance with Article 8.2 from the date such payment is due until full payment of such delinquent amount and accrued interest thereon is made.

4.4 OWNERSHIP OF SEWERAGE SYSTEM. Atlanta agrees that the payment of its Required Financial Contribution for any current or future Project undertaken pursuant to this Agreement and payment of the rates assessed for its flow through Camp Creek constitute consideration paid for Atlanta's contractual right to use Camp Creek in the amount of its Reserved Capacity therein, and does not constitute consideration paid for any ownership right, ownership interest, indicia of ownership or other property right in Camp Creek. Atlanta's use of Camp Creek in the amount of its Reserved Capacity specified herein shall not constitute any transfer of any ownership rights, ownership interests or other property rights in Camp Creek.

## **ARTICLE 5**

### **USE OF FACILITIES**

#### **5.1 ATLANTA'S RIGHT TO USE OF CAMP CREEK.**

5.1.1 PAST CAPITAL IMPROVEMENTS. Subject to Article 2.3 and 2.4 of this Agreement and payment of the amount shown in **Exhibits D and E**, Atlanta's Reserved

Capacity in Camp Creek (when rated at 13 mgd prior to current expansion) is 19.09%. Atlanta's Reserve Capacity of the 13 mgd Camp Creek shall be 2.48 mgd.

5.1.2 CURRENT CAPITAL IMPROVEMENTS. As addressed in Article 2.1 above, on the effective date when the Replacement Camp Creek design is re-rated by EPD to permit 24 MGD of discharge flow, Atlanta shall retain the same 15.0% Reserved Capacity Percent of the plant's revised Design Capacity and the same 15.0% Required Financial Contribution Percent of the Total Project Cost of the Replacement Camp Creek facility. Atlanta's payment of its Required Financial Contribution for the total cost of projects undertaken pursuant to Articles 2.1 and 2.2 hereof, and Atlanta's timely payment of applicable treatment rates (currently \$1.44 per 1,000 gallons) for its use of Camp Creek pursuant to this Agreement will entitle Atlanta to discharge in the future no more than the following respective Reserved Capacity of flow to Camp Creek:

Camp Creek Replacement Facility

	Design Capacity (MGD)	Atlanta's Reserved Capacity (Percent)	Atlanta's Reserved Capacity (MGD)
Maximum Month Daily Flow	24	15%	3.6
Peak Wet Weather Flow	60	15%	9.0

5.1.3 RE-RATING OF RESERVED CAPACITY. The percentage of reserved capacity allocated to Atlanta for the Camp Creek facility may not be increased or decreased except by amendment of this Agreement. Notwithstanding the provisions of Article 5.1.2, in the event that reserved capacity of the Camp Creek facility is re-rated through orders, permits or other federal or state regulatory requirements, Atlanta's percentage of reserved capacity will remain unchanged, but the actual reserve capacity will be increased or decreased proportionally. An amendment to this Agreement shall be implemented to reflect such re-rating.

5.2. DETERMINATION AND PAYMENT OF APPLICABLE RATES. Atlanta agrees to pay for its flow usage at an established rate (currently \$1.44 per 1,000 gallons) that reflects the

cost of service being provided as established and revised from time to time in accordance with Article 1.14. Said rate for flows exceeding the Reserved Capacity, for future flows only, shall be at the wholesale rate (currently \$3.50 per 1,000 gallons) inclusive of a capital component (based on no previous capital contribution to the Sewerage System; O&M/capital). Payments shall be due within thirty days of receipt of such billing.

Fulton will charge and Atlanta will pay for wastewater services at Fulton's established rates that are in effect on the effective date of this Agreement ("Initial Rate"). The Initial Rate will be in effect until a new rate has been established based on an agreed upon utility industry standard cost of service methodology that Fulton will follow in determining wholesale rates ("New Rate"). If Fulton completes its cost of service study and gains approval by its Governing Authority within the initial 12-month period following execution of this Agreement ("Initial 12-Month Period"), then the New Rate will be applied retroactively beginning with the effective date of this Agreement. If Fulton does not complete its cost of service study and gain approval by its Governing Authority within the Initial 12-Month Period, the Initial Rate will continue to be in effect during the Initial 12-Month Period and the opportunity for retroactive rate adjustment will be forfeited. Any New Rate that is applied retroactively during the Initial 12-Month Period shall not be greater than 150% of the Initial Rate. However, nothing herein is intended to be construed as affecting Fulton's sole authority to revise its rates.

5.3 DETERMINATION OF FLOWS. The basis for billing shall be metered flow volumes wherever possible. Meters shall be calibrated no less often than quarterly, and appropriate calibration records shall be retained for not less than three years. Atlanta shall have the opportunity to observe the calibration process, test the calibration equipment and review the calibration records of Fulton upon written request. Any meter tested and found to be accurate within ten percent shall be considered accurate for billing purposes. Where metering stations are not feasible or a dispute arises with respect to the accuracy or appropriateness of metering

results, Atlanta's Commissioner of Watershed Management and the Fulton's Director of Public Works shall mutually agree on an appropriate resolution.

5.4 PROVISION OF DATA. Both parties agree to provide flow data, or, if flow is not metered, water consumption within the service area and population data to the other as may be reasonably requested in writing by the other party within ten (10) business days following receipt of each such request.

5.5 CHANGES IN CAPACITY. Atlanta may request additional Reserved Capacity in Camp Creek. Any increase of Reserved Capacity shall require a revision of the Required Financial Contribution determined by the Required Financial Contribution Percent of the Total Project Cost of any future capital improvements to such facility. The percentage of Reserved Capacity and the corresponding Required Financial Contribution Percent may not, however, be increased or decreased except by formal written amendment of this Agreement.

5.6 FUTURE EXCESS FLOW. When the average daily flow received from Atlanta to Camp Creek based on a 60-day reporting period reaches 90% of the Reserved Capacity for such facility, Atlanta must prepare and submit to Fulton a written plan which demonstrates how future flows will be maintained within the Reserved Capacity. Should Atlanta's flow received at Camp Creek exceed its then-current Reserved Capacity, Atlanta shall immediately take appropriate measures to reduce its flow to within its Reserved Capacity. Continued discharge in excess of the Reserved Capacity, without prior written approval by Fulton, calculated as a daily average over 60 days time, will be considered a material breach of this Agreement, for which Fulton is entitled to one or more of the following remedies, none of which shall be an exclusive remedy: (a) immediate payment of the applicable rate set forth in Article 5.2 with respect to the Reserved Capacity flow and the flow in excess of the Reserved Capacity plus a surcharge rate equal to 25% of the then current rate applicable to the excess flow, (b) payment (or reimbursement) of any and all damages claimed by third parties directly related to such excess flow, (c) immediate payment (or reimbursement) of any and all civil penalties and fines imposed

by regulatory agencies or courts of law directly attributed to such excess flow, (d) interest on any aforesaid amount not paid when due pursuant hereto at the Applicable Interest Rate calculated in accordance with Article 8.2, and (e) any and all other remedies available at law or in equity. Any amount payable pursuant to this Article 5.6 shall be paid by Atlanta within fifteen (15) days following written demand thereof. The obligation to pay the applicable rate plus surcharge shall arise in the event that Atlanta's flows to Camp Creek exceed those set forth in Article 5.1.2.

## **ARTICLE 6**

### **COLLECTION SYSTEM**

6.1 **FULTON'S RIGHTS.** Fulton shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fulton.

6.2 **ATLANTA'S RIGHTS.** Atlanta shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Atlanta.

6.3 **CHARGES FOR CONNECTIONS.** Atlanta shall have the right to determine and impose charges for connections permitted or made to the Collection System within its sewer service boundaries. This right shall include the right to contract with other sewer service provider(s) for the use of the Sewerage System within its sewer service boundaries, provided that Atlanta shall not permit by contract the discharge of flow which will result in Atlanta's exceeding its maximum Reserved Capacity flow to Camp Creek as set forth in Article 5 hereof.

6.4 **OPERATION AND MAINTENANCE.** Fulton and Atlanta shall be responsible for operations and maintenance of the Collection Systems located within their respective sewer service boundaries.

## ARTICLE 7

### SEWER USE ORDINANCES AND INDUSTRIAL PRETREATMENT PROGRAMS

7.1 RESPONSIBILITIES. Each party will be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within its jurisdictional limits.

7.2 REVISIONS. Atlanta will amend and/or revise its sewer use ordinance and industrial pretreatment program to comply with all state and federal requirements and will accept and implement reasonable changes to such ordinance and program requested in writing by Fulton with respect to control of discharges which ultimately will be treated at Camp Creek. When required for compliance with Fulton's NPDES permit, Atlanta will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Fulton.

7.3 ENFORCEMENT AND PERMITTING. Atlanta agrees to diligently enforce its sewer use ordinance and industrial pretreatment program for users of its portion of the Sewerage System. Atlanta will issue permits to all industrial dischargers within its jurisdictional limits as required by the ordinance and pretreatment program and will monitor compliance with the permits. A written report of non-compliant discharges within Atlanta's jurisdiction tributary to Camp Creek will be provided by Atlanta if any such non-compliance occurs.

7.4 FAILURE TO ENFORCE. In the event Atlanta fails to take reasonable pretreatment enforcement action on a timely basis, Fulton may take whatever action by law it is authorized to take.

7.5 OTHER JURISDICTIONS. Before an industrial user located outside the jurisdictional boundaries of Atlanta discharges wastewater through the Atlanta sewer system into the Fulton sewer system for treatment at Camp Creek, Atlanta will enter into an agreement with the jurisdiction in which such industrial user is located. The terms of such agreement shall be substantially equivalent to the applicable terms of this Agreement, and such agreement must

be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

7.6 ANNUAL REPORTS. Atlanta will submit a written annual report to Fulton on the compliance statu<sup>s</sup> of each significant industrial user and any enforcement response taken or anticipated. Each such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

7.7 EMERGENCY ACTION. Fulton, acting as an agent of Atlanta, may take emergency action to stop or prevent any discharge into its Sewerage System for treatment at Camp Creek that is generated in, or transported through Atlanta, when in the reasonable opinion of Fulton such discharge presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, or contamination to Fulton's Sewerage System. Fulton agrees to provide such notice as is practicable to the sewer user and Atlanta of its intent to take emergency action prior to taking action; provided, however, it is understood and agreed the opportunity to respond to such action or anticipated action may be limited to a hearing after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

## **ARTICLE 8**

### **PROVISIONS OF GENERAL APPLICATION**

8.1 RIGHT TO SEEK SPECIFIC PERFORMANCE. The parties agree that the costs and damages resulting from a breach of the contractual rights to use the Sewerage System facilities up to the specified amounts granted by this Agreement may not be susceptible of monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy and the provisions of Article 8.9 have been complied with, either party shall be entitled to specific performance or any other equitable remedies provided by law.



8.2 RATE OF INTEREST. Whenever this Agreement provides for the accrual and payment of interest on sums to be paid by one party to the other, such interest shall be calculated at the Applicable Interest Rate or Rates as defined in Article 1.1 in effect during the period for which interest is due. Interest shall be calculated at the Applicable Interest Rate based upon the total number of calendar days during which the applicable amounts remain unpaid, including the original due date of the delinquent payment and excluding the day on which the amount (including accrued interest) is paid in full.

8.3 OPERATIONS REVIEW. Both parties agree that, upon receipt by one party of a written request from the other party for an operations review, an operations review to determine the status of the operation, maintenance and personnel needs of any component of the Sewerage System, as well as the efficiency, management, reliability and operational cost-effectiveness of any component of the Sewerage System, shall be completed and a written report of such review and the resulting recommendations shall be delivered to the requesting party within ninety (90) days following receipt of the written request. The reasonable out-of-pocket costs of the operations review will be paid by the party requesting same. The recommendations of an operations review will not bind either party.

8.4 SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement shall be construed to adopt, but not to enlarge upon, all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provisions of said Constitution or laws, the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

8.5 WAIVER. A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.

8.6 TERM OF AGREEMENT. This Agreement shall be in effect and shall constitute a binding obligation of the parties hereto from and after its execution by the last party to execute same and shall continue in effect for fifteen (15) years. Upon written notice not less than ninety (90) days prior to expiration, this Agreement may be renewed for an additional term of five (5) years.

8.7 PERIODIC REVIEW OF PROVISIONS. The parties shall hold periodic reviews of the provisions of this Agreement in order to provide for the changing needs of both parties, and to insure the Sewerage System meets all applicable state and federal requirements, as they may be promulgated or amended. The parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both parties. However, nothing herein shall prevent either party from proposing amendments to the other at any time during the term of this Agreement.

8.8 NOTICE OF COMPLETION OF DETERMINATION OF FINAL PROJECT COST. Within one hundred and eighty (180) days of the completion of a Project, Fulton will notify Atlanta of such completion and determination of final cost of the Project. Any overpayment or underpayment by Atlanta shall be settled in lump sum not more than sixty (60) days after providing such notice.

8.9 RESOLUTION OF DISPUTES. Should there arise any issues or disputes related to this Agreement, the parties will in good faith attempt to resolve such issues or disputes promptly and amicably, and may by mutual agreement submit same to non-binding mediation.

8.10 FIRE AND EXTENDED INSURANCE COVERAGE. Fulton shall obtain and maintain fire and extended coverage, flood, vandalism, and malicious mischief insurance coverage for its capital assets and personal property included in the Sewerage System, including boiler or pressure vessel explosion coverage and all other coverage reasonably necessary to adequately cover reasonably foreseeable risks, insuring the buildings' systems, equipment and other improvements and all additions, extensions, alterations and modification thereto in an amount equal to the full replacement value thereof, as such value shall be determined periodically by Fulton. The cost of such coverage shall be allocated to the insured facility. Insurance in no way limits Fulton's obligations as set forth in the terms of this Agreement.

8.11 DAMAGE OR DESTRUCTION OF FACILITIES. In the event of damage or destruction by fire or other casualty of the Sewerage System, Fulton shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Any repair or rebuilding required hereunder shall be paid for with the proceeds of the insurance required under Article 8.10 and any remaining costs shall be paid by Fulton, as the party obligated hereunder to obtain such insurance.

8.12 PERSONAL LIABILITY. No elected official, director, officer, or employee of either party shall be charged personally or held contractually liable by or to the other party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

8.13 RESPONSIBILITY OF PARTIES FOR SEWERAGE SYSTEM. Atlanta and Fulton shall be responsible for the maintenance, repair and operation of their respective components of the Sewerage System.

8.14 NO THIRD PARTY BENEFICIARY. No party not a signatory to this Agreement shall be beneficiary of the rights and obligations there under.

8.15 TIME OF ESSENCE. Time is of the essence of this Agreement.

8.16 HEADINGS. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

8.17 ASSISTANCE. Atlanta and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Sewerage System.

8.18 NUMBER OF ORIGINAL DOCUMENTS. It is agreed between the parties that this Agreement shall be executed in two or more originals, all of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.

8.19 ASSIGNMENT OF AGREEMENT. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any party hereto except with the consent in writing of the other party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a party hereto of any obligation hereunder.

8.20 INTERGOVERNMENTAL AGREEMENT. The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

Atlanta shall pay its financial obligations under this Agreement in accordance with the provisions of this Agreement, whether or not a Project, or any part thereof, has been completed, is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction

by offset and shall not be conditional upon the performance or non-performance by Fulton of any other agreement or any other condition whatever.

8.21 DEFAULT. Failure of Atlanta to pay Fulton any of the payments required under this Agreement when due or failure of either party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such party. In any such event the non-defaulting party may, after complying with the provisions of Article 8.8, bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term or obligation of this Agreement against the other party.

8.22 NOTICE. All notices given pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton County shall be addressed as follows, unless otherwise directed in writing:

**County Manager**  
Fulton County Government Center  
141 Pryor Street, Suite 10061  
Atlanta, Georgia 30303

With a copy to the:

**Director**  
**Fulton County Department of Public Works**  
Fulton County Government Center  
141 Pryor Street, Sixth Floor  
Atlanta, Georgia 30303.

All notices to Atlanta shall be addressed as follows, unless otherwise directed in writing:

**Mayor**  
City of Atlanta  
55 Trinity Avenue, Suite 2400  
Atlanta, Georgia 30303-3520

With a copy to the:

**Commissioner**  
Department of Watershed Management  
55 Trinity Avenue, Suite 5400

Atlanta, Georgia 30303-3520

IN WITNESS WHEREOF, the duly authorized officials of Atlanta and Fulton have caused the name of Atlanta and the name of Fulton and the seals of said political subdivisions and the signatures of their duly authorized executive officers to be affixed hereto on the dates indicated below:

**ATTESTED:**

**FULTON COUNTY**

\_\_\_\_\_(Seal)  
Clerk to the Commission

By: \_\_\_\_\_  
Chairman,  
Board of Commissioners

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Director, Department of Public Works

\_\_\_\_\_  
County Attorney

**ATTESTED:**

**CITY OF ATLANTA**

\_\_\_\_\_(Seal)  
Municipal Clerk

By: \_\_\_\_\_  
Mayor

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Commissioner  
Department of Watershed Management

\_\_\_\_\_  
City Attorney

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature): Megan S. Middleton 

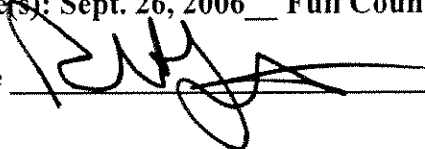
Contact Number: 6207

Originating Department: Watershed Management

Committee(s) of Purview: City Utilities

Council Deadline: September 11, 2006

Committee Meeting Date(s): Sept. 26, 2006 Full Council Date: October 2, 2006

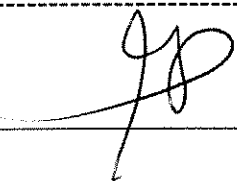
Commissioner Signature 

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THREE (3) INTERGOVERNMENTAL AGREEMENTS WITH FULTON COUNTY, GEORGIA, TO PROVIDE FOR FORMAL SERVICE AGREEMENTS FOR WHOLESALE WASTEWATER SERVICES PROVIDED BY THE CITY OF ATLANTA AND BY FULTON COUNTY, ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) \$26,772,432.00

Mayor's Staff Only

Received by Mayor's Office: 9/27/06 (date) Reviewed by: 

Submitted to Council: 9/29/06 (date)